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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,671	12/31/2003	Nicole L. Blankenbeckler	HT3827USNA	9730

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E I DU PONT DE NEMOURS AND COMPANY
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WILMINGTON, DE 19805

EXAMINER

LEUNG, PHILIP H

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/749,671	Applicant(s) BLANKENBECKLER ET AL.	
	Examiner Philip H Leung	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 11-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 21-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6-14, 7-29, 12-1-04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election with traverse of Group II, claims 24-30 along with the product claims 1-10 and 21-23 in the reply filed on 3-3-2005 is acknowledged. The traversal is on the ground(s) that the support for the restriction requirement set forth in paragraph 2 was not understood. This is not found persuasive because this paragraph was based on the Office form paragraph 8.20.01 as set forth in M.P.E.P. 806.05(i). It is clearly set forth in the M.P.E.P. article, the statement "the use (Group I) cannot be practiced with a materially different product" means that when the product of claims 1-10 and 21-23 and the product used in Claims 11-20 (Group I) are not patentably distinct, the product claims have to be examined with the use of the product (Group I) or the making of the product (Group II). However, since the product as claimed in claims 1-10 and 21-23 is not allowable (from the examiner's initial review based on the PCT/US03/41835 search report cited by the applicant; see the reasons detailed in the following paragraphs), restriction between the use of the product and the making of the product is proper according to the M.P.E.P. 806.05(i).

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 11-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 3-3-2005.

Art Unit: 3742

3. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Also, every feature of the invention specified in the claims must be shown by drawings. Therefore, the claimed article having a substrate with a central portion and adjacent edges with various amounts of susceptor material effectiveness (claim 1) and wherein the article is a circle (claim 9) or a rectangle (claim 10) must be shown by a drawing. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. When a drawing is provided, the specification should also be amended to provide a brief description of the drawing and a detailed description thereof.

Art Unit: 3742

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 4, 6, 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Brandberg et al (US 4,970,358) (cited by the applicant).

Brandberg shows an article suitable for heating a food by microwave energy comprising a substrate 54 supporting a susceptor material 52 for converting microwave energy to heat wherein: (i) a central portion 56 of the susceptor material is centered on a supporting surface of the substrate and (ii) on the basis of an equal amount of striking microwave energy an area encompassing the central portion of the susceptor material converts more microwave energy to heat in comparison to an equal area adjacent edges 58, 60 of the susceptor material wherein a gradient of susceptor material effectiveness is present in at least a portion of a line which extends from a central area of the susceptor material or from a midpoint of susceptor material to a terminal edge (see Figures 2 and 3 and col. 7, lines 10-48).

8. Claims 1, 2, 4-8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshihara (JP 3-295192).

Yoshihara shows an article suitable for heating a food by microwave energy comprising a substrate 1 supporting a susceptor material 2 for converting microwave energy to heat wherein: (i) a central portion 2a of the susceptor material is centered on a supporting surface of the substrate and (ii) on the basis of an equal amount of striking microwave energy an area

Art Unit: 3742

encompassing the central portion of the susceptor material converts more microwave energy to heat in comparison to an equal area adjacent edges 2b of the susceptor material wherein a gradient of susceptor material effectiveness is present in at least a portion of a line which extends from a central area of the susceptor material or from a midpoint of susceptor material to a terminal edge (see Figures 1-8 and the English abstract). In regard to claims 4-8, it teaches the gradient of susceptor material effectiveness may be made by differences in thickness or concentration.

9. Claims 1, 2, 4, 5, 9, 10, 21, 22, 24-26, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Turpin et al (US 4,904,836) (cited by the applicant).

Turpin shows in Figures 1-17 an article suitable for heating a food by microwave energy comprising a substrate supporting a susceptor material for converting microwave energy to heat wherein: (i) a central portion of the susceptor material is centered on a supporting surface of the substrate and (ii) on the basis of an equal amount of striking microwave energy an area encompassing the central portion of the susceptor material converts more microwave energy to heat in comparison to an equal area adjacent edges of the susceptor material wherein a gradient of susceptor material effectiveness is present in at least a portion of a line which extends from a central area of the susceptor material or from a midpoint of susceptor material to a terminal edge (see col. 14, line 20 – col. 15, line 22). In regard to claims 21, 24 and 28, see Figure 2, 32 and 33 and col. 15, lines 23-64.

Art Unit: 3742

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 3, 6-8, 23, 27 and 30 are rejected under 35 U.S.C. 103(a) as being obvious over Turpin et al (US 4,904,836), in view of Yoshihara (JP 3-295192).

As set forth above, Turpin shows every feature except for the explicit showing of the use of different concentration of a susceptor material for creating the gradient. However, it does show that differential heating can be provided by a difference in thickness and/or material of the susceptor material (col. 15, lines 10-14 and 20-22 and also, col. 15, line 65 – col. 16, line 9). The difference in material obviously implies the material may have different concentration of lossy materials. Anyway, Yoshihara shows a microwave food heating susceptor with a gradient as claimed and teaches the gradient of susceptor material effectiveness may be made by differences in thickness or concentration. It would have been obvious to an ordinary skill in the art at the time of invention to modify Turpin to use material of different thickness and/or concentration for forming the susceptor gradient for more precise heating control to achieve better heating result,

Art Unit: 3742

in view of the teaching of Yoshihara. In regard to claim 3, the use of a susceptor on a microwave ovenware is well known in the art. In regard to claims 23, 27 and 30, to cook any suitable food product, such as lasagna, instead of pizza with the susceptor would have been obvious to any ordinary artisan.


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hollenberg et al (US 4,865,921) and Bodor et al (US 5,391,864) are further cited to show microwave food susceptors with various claimed features.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip H Leung whose telephone number is (571) 272-4782.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on (571) 472-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Philip H Leung
Primary Examiner
Art Unit 3742

P.Leung/pl
5-15-2005